

E. Martin Davidoff, Attorney at Law
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Counsel for Plaintiffs

RECEIVED

JUL 16 2020

AT 8:30 WC M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

ESTATE OF WILLIAM C. MACK,
LORRAINE A. WILKINSON,
PERSONAL REPRESENTATIVE,
AND LORRAINE A. WILKINSON,

Plaintiffs,

v.

UNITES STATES OF AMERICA,

Defendant.

Civil Action No.: _____

Jury Trial: YES

COMPLAINT

I, E. Martin Davidoff, on behalf of plaintiffs, bring this suit for claim of refund against the United States of America for the tax years ended December 31, 2014, December 31, 2015, and December 31, 2016, and as a basis for the complaint alleges the following:

JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. § 1346 and 26 U.S.C. § 7422.
2. Venue is proper in this Court under 28 U.S.C. §§ 13914(b)(1) and (b)(2).

PLAINTIFFS

1. William C. Mack died on October 10, 2016.
2. On January 5, 2017, the State of New Jersey, Monmouth County Surrogate's Court appointed William C. Mack's widow, Lorraine A. Wilkinson Personal Representative of his Estate.
3. Plaintiff, Estate of William C. Mack, Lorraine A. Wilkinson, Personal representative resides in 12 Babbitt Way, Allentown, New Jersey, within this judicial district.
4. Plaintiff Lorraine A. Wilkinson resides in 12 Babbitt Way, Allentown, New Jersey, within this judicial district.

ADMINISTRATIVE CLAIM FOR REFUND

1. On or about April 15, 2017, Plaintiffs filed a joint federal income tax return, Form 1040, for the year ended December 31, 2016, claiming an overpayment of \$18,821.
2. On or about April 15, 2017, Plaintiffs attached to their December 31, 2016 Form 1040 a Form 1045, Application for Tentative Refund carrying back the

claimed Net Operating Losses to the tax years ended December 31, 2013, and December 31, 2014 seeking refunds of \$20,318 and \$1,783, respectively.¹

3. On May 19, 2017, the IRS issued Letter 216C stating that the carryback loss did not exist and returned the Application for Tentative Refund.

4. On May 22, 2017, the Internal Revenue Service (“IRS”) issued Notice CP25, informing Plaintiffs’ that it adjusted Plaintiffs’ December 31, 2016 Form 1040.

5. Plaintiffs were not provided an opportunity to appeal the May 22, 2017 adjustment to the IRS Office of Appeals.

6. On July 31, 2017, Plaintiffs responded to the May 19, 2017 IRS Letter 216C requesting that the Net Operating Loss (“NOL”) claimed on their December 31, 2016 Form 1040 be allowed.

7. On February 26, 2018, the IRS issued Letter 916C stating that it cannot process Plaintiffs’ claim because the NOL was not reported on Plaintiffs’ filed December 31, 2016 Form 1040.

8. The IRS claim that the NOL was not reported on Plaintiffs’ filed December 31, 2016 Form 1040 as set forth in paragraph 7 above is erroneous.

¹ Per I.R.C. § 172, a net operating loss carryback is limited to the preceding two (2) years. I.R.C. § 172(b)(1)(A)(i).

9. On March 14, 2018, Plaintiffs responded to the February 26, 2018 IRS Letter 916C and provided the requested amended December 31, 2016 Form 1040X along with Form 1045 for the years ended December 31, 2014, and December 31, 2015 requesting refunds in the amounts of \$8,031, \$20,141 and \$9,793, respectively.

10. On May 25, 2018, the IRS issued Letter 105C disallowing the claim for refund for the year ended December 31, 2016.

11. On June 18, 2018, Plaintiffs requested an appeal of the IRS's denial of their claim for refund.

12. To this date, Plaintiffs have not had an appeal hearing.

CLAIM

1. During the period of January 1, 2018, until his death on October 12, 2016, William C. Mack owned and operated a horseracing business.

2. During this period, he owned four (4) to five (5) horses.

3. During this period, he raced those horses at various racetracks in Southeastern Pennsylvania and Central New Jersey.

4. William C. Mack stabled and bred the horses.

5. William C. Mack reported the income and expenses earned and incurred for this business on a Schedule C attached to his and Plaintiff Lorraine A. Wilkinson's joint federal income tax returns, Form 1040.

6. For the years ended December 31, 2013 and 2014, William C. Mack showed net profits of \$14,458 and \$11,703, respectively for his Horse Racing Business.

7. Plaintiffs treated the losses from William C. Mack's horseracing business as passive.

8. Plaintiffs claimed the suspended passive loss carryover on their December 31, 2016 federal income tax return, Form 1040.

9. The suspended loss resulted in a NOL for the year ended December 31, 2016.

10. The 2016 federal income tax return shows a total income of negative \$103,904.

11. On or about April 15, 2017, Plaintiffs filed their December 31, 2016 Form 1040 claiming a refund of \$18,821.

12. With their December 31, 2016 return, Plaintiffs submitted a Form 1045, Application for Tentative Refund for the years Ended December 14, 2013 and 2014, in the amounts of \$20,319 and \$1,783, respectfully.

13. On or about May 22, 2017, the IRS adjusted Plaintiffs return reducing the claimed losses from William C. Mack's horseracing business and increasing the amount of estimated payments made by Plaintiffs for 2016.

14. On March 14, 2018, Plaintiffs submitted an amended December 31, 2016 Form 1040X along with Form 1045 for the years ended December 31, 2014, and December 31, 2015 requesting refunds in the amounts of \$8,031, \$20,141 and \$9,793, respectively.

RELIEF

WHEREFORE, Plaintiffs prays for the following:

a. That the Court find that plaintiffs are entitled to their claims for refund for the years ended December 31, 2014, 2015, and 2016, in the amounts of \$20,141, \$9,793, and \$8,031, respectfully.

2. That the Court remand the case to IRS appeals for consideration under the Taxpayer First Act.

3. That the Court grant Plaintiffs such other and further relief, including but not limited to, costs, as is just and reasonable.

Date: July 14, 2020



E. MARTIN DAVIDOFF, Esq.

E. Martin Davidoff, Attorney at Law

1249 South River Road, Suite 305

Cranbury, NJ 08512

Telephone: (723) 274-1999

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Counsel for Plaintiffs



Department of the Treasury
Internal Revenue Service

Stop 6525 (AM CIS)
Kansas City MO 64999-0025

In reply refer to: 0937685351
May 25, 2018 LTR 105C 3
201612 30 1
00024409
BODC: SB

WILLIAM MACK DECD & L WILKINSON
% WILLIAM R BRITTON JR
1 MAKEFIELD RD APT E175
MORRISVILLE PA 19067-5023

1670

Taxpayer identification number: [REDACTED]
Kind of tax: Individual Income Tax
Amount of claim: \$8,031.00

Date of claims received: Jan. 05, 2018
Tax period: Dec. 31, 2016

Dear Taxpayer:

WE COULDN'T ALLOW YOUR CLAIM

We disallowed your claim for credit for the period listed at the top of this letter.

WHY WE CAN'T ALLOW YOUR CLAIM

In December of 2017, we asked that you please explain from what activity and from what tax years the suspended passive activity losses were derived. We have not received any further information or any forms or schedules to support any changes.

WHAT TO DO IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You can represent yourself before Appeals or you can have an attorney, certified public accountant, enrolled agent, or any other person authorized to practice before the IRS represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement. If we don't hear from you within 30 days from the date of this letter, we will process your case with the information we have now.

For claims \$25,000 or less, you can request a small dollar case appeal. You must prepare a formal protest for a disallowed claim over \$25,000.

MAR

Via Fax CPA

07/03/2020

0937685351
May 25, 2018 LTR 105C 3
201612 30 1
00024410

WILLIAM MACK DECD & L WILKINSON
% WILLIAM R BRITTON JR
1 MAKEFIELD RD APT E175
MORRISVILLE PA 19067-5023

To request a small dollar case appeal:

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address at the top of the first page of this letter.

To prepare a formal protest:

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Include a detailed statement of facts with names, amounts, locations, etc., to support your reasons for disputing the disallowance.
5. If you know the particular law or authority that supports your position, identify that law or authority by providing a legal citation.
6. Sign the perjury statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he or she must sign the statement.
7. Mail your written formal protest to the address at the top of the first page of this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

<u>William Mack Jr</u>	<u>6/18/2018</u>
Signature	Date
<u>Amari A. Mack</u>	<u>6/18/2018</u>
Spouse's Signature, if a Joint Return	Date


STATEMENT BY INDIVIDUAL AUTHORIZED TO PRACTICE BEFORE THE IRS

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge

0937685351
May 25, 2018 LTR 105C 3
201612 30 1
00024411

WILLIAM MACK DECD & L WILKINSON
% WILLIAM R BRITTON JR
1 MAKEFIELD RD APT E175
MORRISVILLE PA 19067-5023

the protest and accompanying documents are true and correct."

37670

Signature of Representative

CMA # 1205-1109SR
PTIN # P00171028
Enrollment Number Date 6/18/2018

If you don't agree with our decision, you can file suit to recover tax, penalties, or other amounts, with the United States District Court that has jurisdiction or with the United States Court of Federal Claims. These courts are part of the judiciary branch of the federal government and have no connection with the IRS.

The law gives you 2 years from the date of this letter to file suit. If you decide to appeal our decision first, the 2-year period still begins from the date of this letter. However, if you signed an agreement that waived your right to the notice of disallowance (Form 2297), the period for filing suit begins on the date you filed the waiver. The 2-year-period can be extended if you and the IRS sign a Form 907.

If you need forms, schedules or publications to respond to this letter, you can download them at www.irs.gov/formspubs or call 1-800-TAX-FORM (1-800-829-3676).

HOW TO CONTACT US

If you have questions, you can call us toll free at 1-800-829-0922.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number (609) 588-5353 Hours 9am - 3pm

Keep a copy of this letter for your records.

Thank you for your cooperation.

You can get any of the forms or publications mentioned in this letter on our website at www.irs.gov/formspubs or by calling 800-TAX-FORM (800-829-3676).

0937685351
May 25, 2018 LTR 105C 3
[REDACTED] 201612 30 1
00024412

WILLIAM MACK DECD & L WILKINSON
% WILLIAM R BRITTON JR
1 MAKEFIELD RD APT E175
MORRISVILLE PA 19067-5023

Sincerely yours,



Jeffrey T. Colson
Field Director, Accts. Mgmt.

Enclosures:
Copy of this letter
Publication 1
Envelope

CERTIFICATE OF SERVICE

I hereby certified that on 7/14/20, a copy of the foregoing complaint was mailed by first-class U.S. mail, postage prepaid, and properly addressed to the following:

Certified Mail#: 9314 8699 0430 0073 2054 36 (Cover Copy Attached)

William Barr, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001;

Certified Mail#: 9314 8699 0430 0073 2058 49 (Cover Copy Attached)

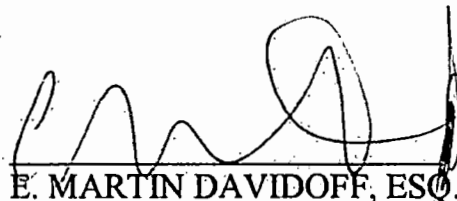
Craig Carpenito, United States Attorney General for District of New Jersey
U.S. Attorney's Office
Clarkson S. Fisher Federal Building and U.S. Courthouse
402 East State Street, Room 430
Trenton, NJ 08608-1507;

and

Certified Mail#: 9314 8699 0430 0073 2061 98 (Cover Copy Attached)

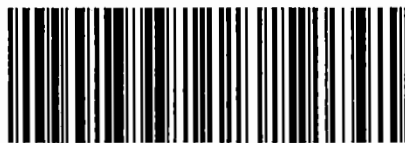
Charles P. Rettig, Commissioner of Internal Revenue
United States Department of Treasury
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Date: July 14, 2020

A handwritten signature in black ink, appearing to read 'E. Martin Davidoff', is written over a horizontal line.

E. MARTIN DAVIDOFF, ESQ.
E. Martin Davidoff, Attorney at Law

E. Martin Davidoff, CPA, Esq.
Attorney at Law
1249 South River Road
Suite 305
Cranbury, NJ 08512



9314 8699 0430 0073 2054 36

RETURN RECEIPT (ELECTRONIC)

COPY



Total Postage: \$6.05

William Barr, Attorney General of the United State
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Reference Number: MR- Wilkinson

E. Martin Davidoff, CPA, Esq.
Attorney at Law
1249 South River Road
Suite 305
Cranbury, NJ 08512



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RETURN RECEIPT (ELECTRONIC)

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Total Postage: \$6.05

Craig Carpenito, US Attorney General for District
US Attorney's Office
Clarkson S. Fisher Federal Building & US Court Hou
402 East State St., Room 430
Trenton, NJ 08608-1507

Reference Number: MR- Wilkinson

E. Martin Davidoff, CPA, Esq.
Attorney at Law
1249 South River Road
Suite 305
Cranbury, NJ 08512



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Washington, DC 20224

Reference Number: MR- Wilkinson